



Comptroller General  
of the United States

1506

Washington, D.C. 20548

## Decision

**Matter of:** International Sales Ltd.

**File:** B-253646

**Date:** September 7, 1993

Charles Bryan for the protester.

Cynthia Z. Springer, Bureau of the Public Debt, Department of the Treasury, for the agency.

Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Agency properly rejected protester's proposal as technically unacceptable where the proposal took exception to material technical requirements under the solicitation.

2. Protest of alleged solicitation improprieties apparent from the face of the solicitation is dismissed as untimely where the protest was first filed after the closing time for receipt of initial proposals.

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### DECISION

International Sales Ltd. protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. BPD 93-R-0008, issued by the Bureau of the Public Debt, Department of the Treasury, for the installation of mezzanine storage.

We deny the protest in part and dismiss it in part.

The RFP was issued on January 20, 1993, as a small business set-aside for the award of a firm, fixed-priced contract to provide and install a modular steel mezzanine for storage. Technical proposals were required to include all necessary background information, technical information to indicate that the proposal meets the specifications, a description of the installation process, drawings that indicate the number and placement of the mezzanine components, instructions regarding assembly and disassembly and a list of required

tools. The RFP informed offerors that their technical proposals would be evaluated to determine if they fully met the solicitation requirements. The RFP further provided that award would be made on the basis of the lowest priced technically acceptable offer.

The agency received five proposals by the March 5, amended closing date. Of these five proposals, two proposals, including the protester's, included no technical proposals, and two proposals contained incomplete information. Because the requirements for this contract were not technically complex, the contracting officer determined that failure to submit an initial technical proposal did not necessarily preclude the possibility of award to any one of the offerors. After discussions with all five offerors, during which International verbally assured the agency that its product would satisfy the RFP's technical requirements, four of the proposals, including the protester's, were included in the competitive range. The agency determined that International's proposal appeared to be technically acceptable, subject to written confirmation in certain areas. Letters were sent to each offeror in the competitive range calling for best and final offers (BAFO), requiring written confirmation of verbal information provided during discussion.

After the evaluation of International's response to this request, the agency found International's proposal technically unacceptable because it did not meet all of the solicitation requirements. Specifically, the agency noted that International's response indicated that the firm's proposal did not comply with the solicitation requirements that the spacing between vertical members (upright posts) be no less than 8 feet, and that the horizontal beams be of roll-formed steel. On May 18, the agency made award to the McKown Sales Company, Inc., whose second low proposal was determined to be technically acceptable. This protest followed.

International asserts that it should have been awarded the contract because it submitted a less expensive proposal. International also argues that the solicitation requirements that the agency contends that its proposal does not meet only serve to increase the cost of the mezzanine storage.

In a negotiated procurement, a proposal that fails to conform to a material solicitation requirement is unacceptable and may not form the basis for award. Electro-Voice, Inc., B-243463, Apr. 3, 1991, 91-1 CPD ¶ 346; Picker Int'l, Inc., 68 Comp. Gen. 265 (1989), 89-1 CPD ¶ 188. An offeror has an obligation to submit a proposal which fully demonstrates the technical acceptability of its offered product. Where an offeror fails to set forth clearly in its

proposal technical information establishing to the procuring agency that the proposed product meets the agency's minimum needs, the agency may reasonably find the proposal technically unacceptable. Worldwide Sec. Servs., Inc., B-244693; B-244693.2, Oct. 21, 1991, 91-2 CPD ¶ 351.

The solicitation stated that a fork lift truck will be used to lift pallets to the mezzanine level, as well as to service areas under the mezzanine. The solicitation required that spacing between the vertical members be no less than 8 feet apart to allow for fork lift truck operation and storage below. International stated, in response to agency questions concerning whether its proposal provided an 8-foot clearing between the vertical members, that:

"(w)e anticipate that there will be some areas where the minimum clearance could be questionable, therefore, we cannot unequivocally state that the requirement will be met, but we can state unequivocally that the minimum distance will be maintained where possible."


Based upon this response, the agency reasonably concluded that International's proposal failed to meet the solicitation requirement that the vertical members be 8 feet apart.

The solicitation also required that the horizontal beams be of roll-formed steel. The primary structural members of the mezzanine offered by the protester are structural steel and the secondary members are formed sheet metal. Since International's proposal effectively took exception to the solicitation requirement that the horizontal beams be of roll formed steel, the contracting officer properly rejected the proposal as technically unacceptable. Once the contracting officer reasonably concluded that the protester's proposal was technically unacceptable, International's lower price in comparison to McKown's price became irrelevant. See GTE Int'l, Inc., B-241692, Feb. 19, 1991, 91-1 CPD ¶ 186.

Finally, International contends that the solicitation requirements discussed above (the minimum distance requirement between the vertical members and the composition of the horizontal beams) are inappropriate because they serve only to increase the cost of the mezzanine storage. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing time for receipt of initial proposals

must be filed prior to the closing time. 4 C.F.R.  
§ 21.2(a)(1) (1993). Since the protester failed to raise  
these allegations concerning the solicitation requirements  
prior to the March 5 closing time for receipt of proposals,  
we dismiss these allegations as untimely.

The protest is denied in part and dismissed in part.

  
for James F. Hinchman  
General Counsel